IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

Crl.Rev.Pet.No. 2715 of 2007()

CC.301/2007 of JUDL.MAGISTRATE OF FIRST CLASS-I, CHENGANNUR

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REVN. PETITIONER: ACCUSED

G.ARUN KUMAR,
KARTHIKAYIL HOUSE, THIRUVANVANDOOR VILLAGE,
THIRUVANVANDOOR, CHENGANNUR.

BY ADV. SRI.IYPE JOSEPH
SRI.V.MANOJ KUMAR

RESPONDENTS: COMPLAINANT & STATE

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1. JOHNSON THOMAS,
KUTTIYIL HOUSE, CHERIYANAD PADINJATTUM MURI,
CHERIYANAD VILLAGE, CHENGANNUR TALUK.

2. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 18/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2715 OF 2007

Dated this the 18th day of July, 2007

O R D E R

The petitioner, who is the accused in C.C.No.650/2004 in L.P.No.16/2007 and now numbered as C.C.No.301/2007 before the JFCM-I, Chengannur, for an offence punishable under section 138 of the Negotiable Instruments Act, 1881, challenges the cognizance taken by the said court beyond the period of limitation and without hearing the petitioner on the question of condonation of delay. Since the first respondent complainant, who was duly served in this revision, has not chosen to enter appearance, this court directed the Registry of this court to ascertain from the Magistrate as to whether cognizance was taken without condoning the delay. The information received from the court below is that eventhough a petition to condone the delay was filed along with the complaint which was registered as C.C.No.301/2007, the delay petition was not entered in the C.M.P. register due to some mistake but the delay petition was allowed by the predecessor-in-office of the present Magistrate on 2.8.2004 without notice to the respondent/accused. If so, the contention of the petitioner is well

founded. The delay could not have been condoned without notice to the revision petitioner/accused vide ***State of Maharashtra Vs. Sharadchandra Vinayaka Dongre and others***[AIR 1995 SC 231] and ***Abdurahiman Vs. Sethu Madhavan***[2006 (4) KLT 33]. The cognizance taken by the Magistrate and the subsequent proceedings are, therefore, without jurisdiction. The matter is remitted to the JFCM-I, Chengannur for proceeding further with the complaint after giving the revision petitioner/accused an opportunity of being heard on the delay petition. The Magistrate shall proceed with the complaint only if the delay is condoned after hearing both sides.

This revision is allowed as above.

(V. RAMKUMAR, JUDGE)

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